Court of Virginia reached a contrary result in *Sanders* v. *Coleman*, 97 Va. 690. There are also three American cases allowing the defense, where the disease was venereal. *Allen* v. *Baker*, 86 N. C. 91; *Shackleford* v. *Hamilton*, 93 Ky. 80; *Gardner* v. *Arnett*, 21 Ky. L. Rep. 1. Mr. Huberich seems to think that a distinction might be taken between venereal disease and other diseases, and that the English courts would allow the defense in the former case; but this seems at least doubtful. The decision in *Hall* v. *Wright* was based on two grounds: (1) that performance was not rendered impossible, and (2) that, even if it was impossible as to part, defendant could still give plaintiff the benefit of his social position. Both grounds seem equally applicable to venereal diseases. In case of such a disease as in *Hall* v. *Wright*, intercourse would be dangerous to defendant's own life, while venereal disease would endanger the life of plaintiff and the health of the offspring. Public policy might be stronger in the latter case, but it would be against the union in both. A recent New Jersey case seems to indicate that such a distinction as the writer suggests would not be taken. The disease was not venereal, but the court in a *dictum* carry the doctrine of *Hall* v. *Wright* to its logical conclusion and repudiate the North Carolina and Kentucky cases. *Smith* v. *Compton*, 58 L. R. A. 480.

The real question in all the cases would seem to be as to the true meaning of the contract. In contracts for personal services incapacity either of body or mind is an excuse for not performing. *Robinson* v. *Davison*, L. R. 6 Ex. 269. It would seem that the conditions implied in ordinary personal contracts should be extended rather than restricted in a contract so thoroughly personal in its nature as the marriage compact. To every contract of marriage might well be coupled the implied condition that a refusal to perform shall be justifiable if the situation of the parties has so changed, without fault on the part of defendant, that a consummation of the married state would be impossible or would endanger the life of either. This would seem to be the correct doctrine. It is in accord with the intention of the parties and is applicable to diseases of all kinds.

A Treatise on the Law of Negotiable Instruments. By John W. Daniel. Fifth Edition. By John W. Daniel and Charles A. Douglass. New York: Baker, Voorheis & Company. 1903. 2 vols. pp. cliv, 933; x, 1004. 8vo.

To sound a discordant note in a chorus of praise is no pleasant duty. An examination of this work, however, convinces us that as there is a good deal of "law taken for granted," so here is a case of merit too freely conceded. It seems to be the fashion for writers of the perfunctory reviews of new editions of well-known law books to style them "legal classics." If all that is necessary to earn that title is to have a successful sale, to pass through several editions, and to be often cited by courts, then this book may be called a "legal classic." But if sound and scientific discussions of principles, accurate statements of the cases, and correct citations are essential to a "legal classic," then this work does not seem to us to deserve that name. We confess that we had ourselves been rather in the habit of taking the merit of the book for granted, and we have been surprised, as a result of a careful examination for the purpose of this review, to find how greatly we were mistaken.

The author, it is true, is more independent than is usual with the writers of legal text-books in the expression of opinion, whether in approving or in dissenting from the decisions of the courts, and this is a commendable feature of his work. But the value of an author's opinions depends largely on the reasons which he gives for them, and in this respect we do not find Mr. Daniel strong. He presents and defends his theories, not like a judge, but rather as an advocate holding a brief, often citing cases which only by a sort of twist can be made to seem favorable to his theories, and ignoring cases which are adverse to them. It is impossible within reasonable space to give more than a few instances.

In section 1361 Mr. Daniel dissents from the long list of authorities which hold that "the drawee paying a forged draft cannot recover back the amount from the party to whom he paid it, whether such party received it before acceptance or afterward." Mr. Daniel claims that the holder of an unaccepted bill who presents it for acceptance or payment "warrants its genuineness" if he indorses it, and, if he does not indorse it, yet "his very assertion of ownership is a warranty of genuineness in itself." Taking together this section and sections 731 and 732 to which Mr. Daniel refers in support of his last proposition, it seems that he likens the holder to a vendor of the instrument, wholly overlooking the difference between a presentment for acceptance or payment and a sale. The implied warranty of genuineness arises only upon a sale or transfer, and all the cases cited in sections 731 and 732 are such cases. As to the indorsement of the holder, it is an error to say that the writing of his name on the back of the instrument when he presents it for payment is an indorsement so as to subject him to any of the liabilities of an indorser to the drawee. The holder is not in any true sense an indorser. His signature operates only as a voucher or receipt, and this is the meaning given to it by the best considered and latest decisions, none of which are referred to by Mr. Daniel, who cites in support of his view only four cases.

In the first of these cases, *National Bank* v. *Bangs*, 106 Mass. 445, the holder who indorsed the instrument (a check) was guilty of negligence in taking it, and his merit was therefore not equal to that of the drawee. Moreover, the holder was the payee, and the court drew a distinction between his case and that of a subsequent holder. The case is also distinguished in the same way in the later case of *Dedham Nat. Bank* v. *Everett Nat. Bank*, 177 Mass. 392, 396, a case not cited by Mr. Daniel. See also *Minneapolis Nat. Bank* v. *Holyoke Nat. Bank*, 182 Mass. 130, 134.

In the second case cited by Mr. Daniel, *Rouvant* v. *San Antonio Nat. Bank*, 63 Tex. 612, the holder was also the payee and was guilty of negligence in taking the instrument.

The third case cited is *First Nat. Bank of Crawfordsville* v. *First Nat. Bank of Lafayette*, 4 Ind. App. 355 (erroneously cited as 4 Ind.). The court in this case relied on *National Bank* v. *Bangs*, *supra*, failing to notice the distinction there made between a payee and a subsequent holder. But as the instrument involved was not a bill of exchange, all that was said by the court as to the effect of the holder's indorsement was *obiter dictum*.

The fourth case, *Warren-Scharf Asphalt Paving Co.* v. *Commercial Nat. Bank*, 97 Fed. 181, has no tendency to support Mr. Daniel's proposition. The instrument, a forged check, was not paid by the drawee bank, but was received on deposit by the plaintiff bank, and the amount was drawn out by the agent of the payee, the defendant, who had indorsed the check with the name of the payee. It was a transfer of the instrument to the plaintiff, and the question was simply whether the defendant was bound by the indorsement of its name by its fraudulent agent.

But more strange than this citation of cases which do not support the text is the fact that Mr. Daniel cites none of the cases which contradict his proposition, although one of them, *Neal* v. *Coburn*, 92 Me. 139, is cited by him in other places. See sections 533 and 1655. In *Neal* v. *Coburn* the drawee bank paid a forged check to the holder. Upon discovery of the forgery and demand by the drawee bank, the holder repaid the money and then sued his indorser, who was the indorsee of the payee. It was held that as the plaintiff was not bound to refund to the drawee bank he could not recover from his indorser. It was claimed that the defendant by indorsing the check guaranteed to every subsequent holder the genuineness of the drawer's signature. But the court said, "The bank upon which the check was drawn did not become a holder. It did not purchase the check. The bank paid it, extinguished it. It was no longer a check and could no longer have a holder as such. It had become merely a voucher." It does not seem quite ingenuous to cite this case on other points and to omit it upon the point under discussion in section 1361.

The Supreme Court of Massachusetts has recently spoken in the same way.

In *Minneapolis Nat. Bank* v. *Holyoke Nat. Bank*, 182 Mass. 130, 134, the court said, "The indorsement of an indorser, using that word in its technical sense, imports a guarantee of previous signatures because it is a transfer and sale; but an indorsement which is not made for the purpose of transfer is not an indorsement within the law merchant, and does not carry with it a guarantee of previous indorsements." This case, it is true, was probably decided too recently to be cited in this edition of Mr. Daniel's book.

But Mr. Daniel fails also to cite in any part of his book the case of *Dedham Nat. Bank* v. *Everett Nat. Bank*, 177 Mass. 392, decided in January, 1901, in ample time to have been included in this edition. In this case, in which the Supreme Court of Massachusetts adhered to the rule of *Price* v. *Neal*, 3 Burr. 1354, the forged checks, which were payable to "Cash," had been indorsed by the holder for payment through the clearing house. The court said (p. 396), "The indorsement of the check by the defendant was not an indorsement by the payee. It was not an indorsement for purposes of transfer, and contained no representations beyond what would have been imported by a presentment in person."

In section 139, in which he discusses the subject of fictitious payee, Mr. Daniel says, "It will be no defense against such *bona fide* holder for the maker to set up that he did not know the payee to be fictitious. By making it payable to such person he avers his existence, and he is estopped as against a holder ignorant of the contrary to assert the fiction." Two American cases are cited: *Kohn* v. *Watkins*, referred to as reported in Cent. L. J. (Jan. 27, 1882), although it has been for more than twenty years printed in 26 Kans. 691, and *Lane* v. *Krekle*, 22 Iowa, 404. In the last cited case the note was payable to the fictitious person *or bearer*, so that the fictitious character of the named payee was unimportant, but the opinion of the court contains a *dictum* in support of Mr. Daniel's position. Mr. Daniel cites also the three reports of the English case of *Clutton* v. *Attenborough and Son*, [1897] A. C. 90, failing to notice that the decision in that case rests on the unqualified provision of the English Bills of Exchange Act, sec. 7 (3), which provides that when the payee is a fictitious or non-existing person the bill may be treated as payable to bearer. The only case which Mr. Daniel cites as contrary to his proposition is *Armstrong* v. *National Bank*, 46 Oh. St. 518. He does cite the case of *Chism, Churchill & Co.* v. *Bank*, which is *contra*, but it is difficult to judge from the manner in which it is cited in the note whether it is intended to be cited in support of the text or as opposed to it. It is moreover cited as in 96 Mass. 641, instead of 96 Tenn. 641, where it belongs. The name "Churchill" is also wrongly given as "Church." Mr. Daniel refers to this case as "citing the text" which would give the impression that it is in accord with Mr. Daniel's view, whereas the court cited the text only to disagree with it.

Mr. Daniel omits another adverse decision—*First Nat. Bank* v. *Farmers & Merchants Bank*, 56 Neb. 149, although this case is cited in sections 669a, 672, and 837 for other points.

Although it is perhaps not pertinent to the exact phase of the subject of fictitious payee just discussed, yet it is proper here to say that the case of *Tolman* v. *American Nat. Bank*, 22 R. I. 462, decided in March, 1901, is not referred to or cited by Mr. Daniel. This case, although wrong, as we believe, both in its statement of the law in the absence of statute and in its construction of the Negotiable Instruments Law, is yet important as the first case arising under the section of the Negotiable Instruments Law dealing with this point, and the omission to refer to it is a strange oversight in a book professing to be up to date.

Mr. Daniel's whole treatment of the subject of fictitious payee in sections 136 to 141 is unsatisfactory and imperfect. He does not point out or discuss the distinction drawn by the courts between cases where an instrument payable to the order of a named person is obtained by false impersonation of such person and where it is obtained by false assumption of agency for such person, the named payee in both cases being sometimes a real, sometimes a non-existing person.

In a sentence added to section 1663 in this edition there is a confused effort to state the effect of some decisions upon cases of false impersonation, although only when the instrument was a check, and here the case of *Tolman* v. *American Nat. Bank, supra,* might well have been cited as opposed to the cases cited in sec. 1663, n. 6. The sentence to which we refer begins as follows: "Cases have arisen in which checks have been paid on forged indorsement made by the person to whom the drawer delivered the check, mistaking his identity for *one whose money is designated as payee.*" (The italics are ours.) We do not believe Mr. Daniel himself can interpret this sentence, written no doubt by one of his collaborators on this edition.

In section 726, which treats of the question whether an accommodation bill can be negotiated for the first time after maturity so that the indorsee can hold the accommodating party, Mr. Daniel states the English rule to be that it can be so negotiated and regrets that the American cases do not uniformly follow the English rule. Aside from overruled cases the English doctrine seems to have been followed only in Maine. There are many American cases to the contrary, some of which Mr. Daniel cites in note 56, to section 726. But late cases in Massachusetts, Rhode Island, and Pennsylvania, are not cited. One case, *Miller* v. *Larned*, 103 Ill. 570, cited as opposed to the English rule, is in accordance with that rule. Another case, *Donnerberg* v. *Oppenheimer*, 15 Wash. 290, referred to as "citing the text," does not involve the point, and the case does not cite section 726 but does cite section 726 a, and it was probably intended to be cited under the latter section, but it is not to be found in the notes to that section.

Again in section 790, in referring to the same subject, the author in note 98 cites the case of *Talmage & Co.* v. *Milliken & Meys*, 119 Ala. 40. This case is not in point. There is nothing in the report of the case to show that the instruments (bonds) had been negotiated after maturity. In section 726 Mr. Daniel states that in *Carruthers* v. *West*, 11 Q. B. 143, "a demurrer was sustained to a plea that it was agreed by the parties that the paper should not be negotiated after maturity, knowledge of the purchaser of such agreement not being averred." There was no such reason given by the court for the decision, which is in these words: "We think the plea bad," but the remarks of Wightman, J., during the argument show the reason to have been that the plea was consistent with the paper's having been indorsed to some one before maturity and indorsed to the plaintiff after maturity by such indorsee.

It is admitted in the English cases that, if there is an agreement that the instrument shall not be negotiated after maturity, one who takes it after maturity is bound by this agreement even though he had no notice of it. But the real question is, whether in the absence of an express agreement one is to be implied from the nature of the transaction. The American doctrine is more in accord with the business view, by which it is understood that the accommodated party shall take care of the instrument at maturity, and therefore that it is to be negotiated only before maturity. Mr. Daniel himself, in defining accommodation paper in section 189, says that the accommodated party "is expected to pay it."

The superiority of the American view becomes still clearer when we consider the case of an accommodation indorser, for his contract is to pay only in case presentment for payment is made at maturity to the party primarily liable on the instrument, and if the instrument has never been negotiated before maturity it cannot be presented for payment at maturity. This argument is strongly presented in *Chester* v. *Dorr*, 41 N. Y. 279. No notice is taken by Mr. Daniel of the cases of *Peele* v. *Addicks*, 174 Pa. 543, and *Same* v. *Same*, ibid. 549. The last mentioned case bears directly on the point discussed in section 726, but is adverse to Mr. Daniel's view.

In section 688 b, reference is made to a case holding that the statement of the value of the indorser's real and personal estate above his signature, is mere surplusage and does not vitiate the indorsement. Of course the question was whether signing a name under such a statement was an indorsement, and the court in the case intended to be referred to held that it was. No reference is

made to the case of *Pickering* v. *Cording*, 92 Ind. 306, which holds the contrary. The case to which Mr. Daniel intended to refer is *Dunning* v. *Heller*, 103 Pa. St. 271, but by one of those mistakes so common in this edition, note 48 cites the case of *James* v. *Ely*, 4 McLean, 173, which is the case intended to be cited in note 49, on another point.

In section 688 c, Mr. Daniel argues in favor of the view that a mere assignment written on a note over a party's signature subjects the signer to the liability of an indorser.

In this edition that form of combined self-approval and advertisement which consists in referring to cases as "citing the text" is continued to a wearisome extent, but here a case which cites the text for the purpose of expressly disapproving it is not referred to at all, although in the notes to section 669 a, which deals with another point, this case is cited as "quoting with approval the text." The case to which we refer is *Spencer* v. *Halpern*, 62 Ark. 595, in which is to be found probably the most complete refutation of Mr. Daniel's argument, the court discussing the reasons given by Mr. Daniel in section 688 c and overthrowing them.

In section 61 the case of *Overton* v. *Tyler*, 3 Barr 346, is condemned, and a long note is devoted to the case of *Zimmerman* v. *Anderson*, 67 Pa. St. 421. Mr. Daniel regards the distinction drawn by the court in the latter case as "a very fine distinction, — one without a material difference," and says that the court evidently does not regard *Overton* v. *Tyler* with much favor. Aside from the fact that the court in a later case, *Sweeny* v. *Thickston*, 77 Pa. St. 131, approved *Overton* v. *Tyler*, there is no difficulty in distinguishing *Overton* v. *Tyler* from cases in other states cited as opposed to it, and showing that it is not inconsistent with them. In Pennsylvania a judgment by confession may be entered before the debt is due if the instrument does not indicate that the warrant of attorney is to be available only in the event of default. The power of attorney to confess judgment in the note in *Overton* v. *Tyler* was not restricted so as to be available only after the maturity of the note, and the practice in Pennsylvania in such a case is to enter judgment before maturity of the note in order to obtain a lien on real property, although the execution cannot issue until after maturity. *Volkenand* v. *Drum*, 143 Pa. 525; *Integrity Ins. Co.* v. *Rau*, 153 Pa. 488; 18 *Banking Law Journal* 801. The effect of entering judgment before maturity of the note, as is pointed out by Gibson, C. J., is to merge the note in the judgment, and there is no longer any note to be the subject of negotiation. An instrument which may be thus terminated at any time is evidently not certain in time. In the cases in other states which seem to be opposed to *Overton* v. *Tyler* the power of attorney to confess judgment did not in terms or by force of the law of the state authorize the entry of a judgment before the maturity of the note, and in those cases in which the form of the instrument is given in the report the power authorized confession of judgment only in case of non-payment at maturity.

The Negotiable Instruments Law provides that negotiability is not affected by a provision which "authorizes a confession of judgment if the instrument is not paid at maturity." This law has been adopted in Wisconsin. Yet in *Wisconsin, &c.* v. *Babler*, 91 N. W. 678, the Supreme Court held that a note, containing a power of attorney to enter judgment on it at any time after its date "whether due or not," was not negotiable. So although the Negotiable Instruments Law has been adopted in Pennsylvania, such a note as that in *Overton* v. *Tyler*, in view of the practice in that state of entering judgment before maturity, must still be regarded as non-negotiable. See 18 *Banking Law Journal* 801.

We have been unable to find a case in which a note authorizing entry of judgment on it before maturity has been held negotiable, and the condemnation by Mr. Daniel of *Overton* v. *Tyler* seems to rest on a failure to notice the difference in the form of the notes and in the practice as to the time when judgment by confession may be entered. See *Thomas* v. *Pendleton*, 1 S. Dak. 150.

Section 1255 purports to state the law of England and its history as to the rights of a payor *supra* protest, and states that an earlier case to the contrary

was subsequently overruled in *Ex parte Lambert*, 13 Ves. 179, and "the doctrine of the text established," that doctrine being that the payor *supra* protest is subrogated to the rights only of the party for whose honor he pays. If Mr. Daniel had continued his study of the history of the subject he would have found that in *In re Overend, Ex parte Swan*, L. R. 6 Eq. Cas. 344, Malins, V. C., refused to follow *Ex parte Lambert*, and held that the payor *supra* protest succeeds to the title of the person from whom, not for whom, he received the instrument, and has all the title of such person to sue on it except that he discharges all parties to the bill subsequent to the one for whose honor he takes it up, and that he cannot indorse it over. Since this time *Ex parte Lambert* has been regarded as overruled, (4 AM. AND ENG. ENCY. OF LAW (2d ed.), 499), and it is included in the Table of Overruled Cases in Chalmers' Digest. Nor does Mr. Daniel seem to be aware that the rule established in *In re Overend, Ex parte Swan*, has been abrogated by section 68 (5) of the English Bills of Exchange Act, and that the Negotiable Instruments Law followed suit, Sec. 304 (N. Y.). At least he makes no mention of these facts, and the case of *In re Overend, Ex parte Swan*, is not cited in his work.

This edition contains, as an appendix, the Negotiable Instruments Law, giving the New York numbering of the sections. No new book on Negotiable Instruments and no new edition of an old book could be complete without including this law, which has already been adopted in so many states, and will no doubt become law in all. But it is not enough to give the law as an appendix. Changes in conflict with the old cases should be noticed when such cases are stated in the text and cited in the notes. In this respect the last edition of Daniel is very imperfect. We note only a few of the omissions.

Section 697, treating of the subject of conditional indorsements, cites *Robertson* v. *Kensington*, 4 Taunt. 30, to the effect that an acceptor who pays an indorsee to whom the paper is indorsed conditionally is liable to the indorser if the condition has not been performed. Mr. Daniel makes no reference to the fact that in England the law was changed by Bills of Exchange Act, sec. 33, and that the Negotiable Instruments Law, sec. 69 (N. Y.), also provides that the party required to pay the instrument may disregard the condition and make payment to the indorsee, whether the condition has been fulfilled or not.

We find here an instance of the practice, so frequent in this edition, of citing irrelevant cases. The text of THOMPSON ON BILLS, 232, is quoted to the same effect as *Robertson* v. *Kensington*, and in the note (87) the case of *U. S. Nat. Bank* v. *Ewing*, 131 N. Y. 506, is cited. This case has no bearing whatever on the point. It was a case in which the accommodation payee of a note indorsed it upon an agreement with the accommodation maker that it should be negotiated in Kentucky. In an action against this *indorser*, the plaintiff, who was not a holder in due course, was held bound by the defense that the agreement had been broken and the note negotiated in New York. The case throws no light on the question whether the *maker* of a note or *acceptor* of a bill should be subjected to the additional burden of ascertaining whether a condition added by an indorser to his indorsement has been performed before the obligation can safely be paid to the indorsee. The case of *Savage* v. *Alden*, 2 Starkie 232, cited in section 697. n. 85, with *Robertson* v. *Kensington*, is also wholly irrelevant. But this error goes back to the first edition.

In sections 306 and 307 Mr. Daniel holds, in accordance with the weight of authority, and very properly we think, that an agent who signs for a principal without authority is not liable on the instrument, but only for falsely assuming authority, or upon an implied warranty of authority. But no notice is taken of the fact that the Negotiable Instruments Law in section 39 (N. Y.) impliedly makes the agent liable on the instrument.

Section 696 states the rule in *Smith* v. *Clarke*, Peake 225, which permits a holder of a bill indorsed in blank by the payee to strike out subsequent special indorsements and recover as bearer under the blank indorsement. Section 8 (3) of the English Bills of Exchange Act, which abrogates this rule (Chalmers, 5th ed., 26) is not referred to, nor is section 28-5 (N. Y.) of the Negotiable In-

struments Law, which has the same effect, although section 70 (N. Y.) of the same law seems by an inadvertence to restore the rule. This is one of the questions arising under the Negotiable Instruments Law which were discussed in those articles by Professor Ames and Judge Brewster in the HARVARD LAW REVIEW and YALE LAW JOURNAL, and by Mr. McKeehan in the AMERICAN LAW REGISTER, which are such notable contributions to the subject and which should be noticed in any new work on Negotiable Instruments.

In sections 1698 a and 1702 a Mr. Daniels contends that a certificate of deposit payable on demand is not dishonored until presented, and in sections 1707, 1707 a, that the Statute of Limitations does not begin to run against such a certificate until demand has been made, and in section 1683 he maintains the same principles as to bank notes. In these claims we think he is right, although there is a conflict of authority, particularly as to the certificates of deposit. But Mr. Daniel fails to state that section 130 (N. Y.) of the Negotiable Instruments Law, in providing that presentment for payment is not necessary to charge the person primarily liable on the instrument, changes the law as to certificates of deposit and bank notes payable on demand in those states in which the Negotiable Instruments Law has been adopted and in which demand had previously been required.

Whatever may be the merits of previous editions of this work, it is clear that this edition is a slovenly piece of book-making. In almost every place where we have tapped the book errors have flowed forth. We have already mentioned a number. Here are a few of the others.

In the table of cases, *Bay* v. *Coddington* is given as in section 826. It is not there mentioned, but note 10 to that section reads "See New York cases on this question, § 831 b," which last section, however, contains no New York case. Section 831 c is the one intended.

In section 1362 is to be found this unmeaning sentence: "Negligence in making paper under a mistake of fact is not now deemed a bar to the recovery of it." Reference to previous editions shows that in the first and second editions "payment" not "paper" was the word used, and that in the third edition this error slipped in, and has been repeated in all subsequent editions.

In section 189, n. 57, the case of *Springs* v. *McCoy*, 122 N. C. 629, is so erroneously stated as to make it seem to hold the exact opposite of the decision. This case really begins on page 628, but it is a common practice in this edition to cite cases, not by the first page of the case, but by the page of the opinion where the doctrine set forth by Mr. Daniel is to be found. In referring to the cases thus cited by Mr. Daniel we have been obliged to cite them in the same erroneous way in order to identify them as the same cases.

In the next to the last line of section 1215, n. 76, the word "inspection" should be "inception." In note 44 to section 139 the case of *Clutton* v. *Attenborough & Son* is cited as in L. R. App. Cas. 90 (1896). This is an error both as to the date and the mode of citation. It should be [1897] A. C. 90.

The case of *First Nat. Bank* v. *Farmers and Merchants Bank*, 56 Neb. 149, is mentioned in the table of cases, in sections 669a, n. 42, 672, n. 58, and 837, n. 4, and in each case "Mechanics" is substituted for "Merchants."

In section 136, n. 35, the case of *Kohn* v. *Watkins* is given as *Kohn* v. *Lewis*. The case of *Chester* v. *Dorr* is given in the table of cases as *Chester* v. *Door*. *Young* v. *Grote* is given in the table of cases as cited in § 1313. It is not to be found in that section or in the notes to it. But mistakes of this kind are so common in this edition that we forbear to give further examples. This edition continues to cite many cases as reported only in law reviews, although they have been for years published in the regular reports.

We have made no special effort to find errors in this edition. None is necessary; they *sautent aux yeux*. Those which we have mentioned and others have come to our notice either when we have opened the volumes at random or when we have examined them to find Mr. Daniel's views upon some controverted point. The notes to this edition add little to the value of the book. They contain many recent cases, but the arrangement is frequently such that the reader cannot ascertain from the note itself whether a case is in accord with

the text or opposed to it, and the doubt is often resolved only by finding that it is neither, because it is irrelevant. Mr. Daniel's book first appeared in 1876, more than twenty-five years ago, and in the interval the law of negotiable instruments has made progress. The scientific and effective way to prepare a new edition of such a book would be to remould and rewrite a large part of it, as was done with SEDGWICK ON DAMAGES. Adding paragraphs to sections and trying to fit new pieces into old notes has resulted in a patchwork which must be confusing to the student and a snare to the practising lawyer. It is never quite safe to trust the statements of a text-book as to the contents of a case, but it would be positively dangerous to take any chances with this work, so full is it of pitfalls for the incautious. In conclusion, it is fair to say that for the errors peculiar to this edition Mr. Daniel is not primarily responsible. The preface informs us that by reason of other exacting employments he could not give to the preparation of this edition his close personal attention, and that the work for the most part was done by others. But Mr. Daniel's debt to his assistants does not seem to be a heavy one. J. D. B.

THE LAW OF SURETYSHIP. By Arthur Adelbert Stearns. Cincinnati: The W. H. Anderson Co. 1903. pp. xvii, 747. 8vo.

In his preface the author sets forth the wide range in the problems that come within the law of suretyship in the most extended sense of that word. Under this head he classes generally all contracts in which two or more are jointly or severally bound for the same duty, also those contracts in which the debtor secures his obligation by the pledge or mortgage of his property. It is not usual to find so clear an apprehension of the problem in suretyship. Wherever there is a principal obligation, and wherever there is a secondary obligation to secure that principal obligation, there is suretyship. If the secondary obligation is a promise, the special situation may be described as personal suretyship; if the secondary obligation is a conveyance, the special situation may be described as real suretyship — in either case the general situation may well be described as suretyship. Personal suretyship is that which is by accepted usage called suretyship, while real suretyship is by accepted usage called mortgage; but in truth suretyship and mortgage are so interwoven that they may always be treated together with advantage, and can never be divided without disadvantage.

One of the most difficult problems of the law of suretyship, indeed a problem both in suretyship and in mortgage, is as to the creditor's right to the surety's securities. The author states the law in the ordinary form upon that question in section 272: that there is subrogation given in favor of the creditor to the securities held by the surety which have been given to him by the debtor. Upon a careful examination of the situation this law seems not to be well founded. It is true that the surety is surety in a personal suretyship, and is debtor therefore of the creditor in that suretyship. But the surety is mortgagee also in a real suretyship of the securities which the principal debtor has given him for his indemnity. It is difficult to see how as to these securities the surety owes any duty to the creditor in the personal suretyship more than to any other creditor of his. The true solution, it seems, is that the proceeds of these securities are the property of the surety, and should be distributed therefore as general, not as special assets.

This example is enough to show the importance of following, in future discussions of the law of suretyship, the lead taken by the author in this treatise. The law of suretyship cannot be worked out without comparison with the law of mortgage; the law of mortgage cannot be appreciated without collation with the law of suretyship. Indeed the desirable end in such investigations is the establishment of general principles applicable to the law of suretyship in this extended sense, namely, the situation in which there are two things in the hands of the creditor, one primary, the other secondary — both for his one satisfaction.

B. W.